IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 756 OF 2005

Smt. Sultana Firoz Ansari .. Appellant

And

Shri Haroon Haji Adambhai .. Respondent

Vs.

The Court Receiver and ors. .. Respondents

Mr. Y.D. Mulani for appellant.

CORAM: B.H. MARLAPALLE, J.

Date : August 02, 2005.

P.C.:

1. Heard Mr. Mulani the learned counsel for the appellant, who is an agent of the Court Receiver for the suit premises in S.C. Suit No.2614 of 1972. The plaintiff took out Notice of Motion No.1906 of 2004 before the trial court praying for cancellation of the agency and for restoration of the suit premises to the Court Receiver. The said Notice of Motion has been allowed by the trial court vide its order dated 5/7/2005. In obedience of the same, the Court

Receiver has already locked the suit premises.

2. It was submitted by the appellant that she did not act in breach of the undertaking furnished to the Court Receiver and she was using the suit premises personally and for her own business. She, therefore, prayed for dismissal of the Notice of Motion on the ground that the impugned order is illegal and without any supporting material.

3. Court Receiver was appointed by the trial court in respect of the suit property, including the premises situated at 155-A, Maulana Azad Road, Mumbai 400 008 and the appellant was appointed as an agent by the Court Receiver on payment of royalty of Rs.3250/- per month. In her undertaking dated 18/8/1994 she had stated that she would use the premises for her personal use and that she would not create any third party interest in the suit premises and would not allow any third party to occupy the same or to run the business from the suit premises. The plaintiff in the Notice of Motion had complained that the appellant had handed over the premises to one Javed Hussain, who is

running a garment shop under the name and style of "Desire Collection" and she was collecting huge amount from the said person. Thus she had committed a breach of the undertaking furnished to the Court Receiver and, therefore, she did not deserve to be continued as an agent of the Court Receiver. The appellant as well as Shri Javed Hussain had filed affidavits along with the affidavit by the plaintiff. The Court Receiver also placed before the trial court his report. It was stated by the Court Receiver in his report that he had paid a surprise visit to the suit premises and found that one Javed Hussain was in the premises and was running garment shop in the name and style of "Desire Collection". This report of the Court Receiver was controverted by the appellant and Shri Javed Hussain by contending that the said business was being run by the appellant and Shri Javed Hussain was her servant/employee. The trial court did not accept these statements and more so because the Court Receiver’s Officers had visited the suit premises on 23/8/2004 and submitted the report. The Court also called upon the appellant to submit any documentary proof in support of her contention that the garment

shop in the name and style of "Desire Collection" was her own business. The Court also noticed that part of the suit premises was being used by the appellant's husband who is an Advocate for his professional purpose. It was under these circumstances that the trial court was satisfied to allow the Notice of Motion and direct cancellation of the agency and in turn took over the premises after removing all the goods/articles. The reasoning given by the trial court in support of the direction does not suffer from any errors and it cannot be termed as illegal on any count. If the trial court, on the basis of material available before it, has taken a view that the subsequent conduct of the appellant was in breach of the undertaking furnished by her and that the premises were being used for commercial purposes by some other person, it was justified in directing the termination of the agency.

4. The appeal must, therefore, fail and the same is hereby dismissed in limine.

(B.H. Marlapalle,J.)